

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 2200

In Reply Refer to:

EPA File No: 02r-20-R9

Glory Gervacio, Director,
U.S. Equal Employment Opportunity Commission
Honolulu Office
Prince Jonah Kuhio Kalanianaʻole Federal Building
300 Ala Moana Boulevard, Room 4-257
Honolulu, HI 96805

Re: Referral of Administrative Complaint

Dear Ms. Gervacio:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is referring a complaint received January 9, 2020 from (b) (6) Privacy an employee of the Hawaii Department of Agriculture (HDOA). The complaint alleges that (b) (6) Privacy was retaliated against because of his participation in the investigation and resolution of a complaint filed under Title VI of the Civil Rights Act of 1964. (b) (6) Privacy also sent ECRCO an email alleging that he had been discriminated against based upon his race and/or national origin ("SE Asian, first generation Filipino"). For this reason, ECRCO is forwarding the complaint to you for processing.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

With respect to the allegations of discrimination based on race/national origin ("SE Asian, first generation Filipino") against the HDOA, please note that ECRCO has limited jurisdiction over employment complaints (see 40 C.F.R. § 7.30 (a)(6).) As such, ECRCO must refer these claims to the EEOC. Federal regulations at 29 C.F.R. § 1691.5(c) state that "[a]n agency shall transfer to

EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint.” As described in 29 C.F.R. §1691.5 “Agency processing of complaints of employment discrimination filed with an agency other than the EEOC,” at Section (c) “An agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint.” Accordingly, as the EEOC may have jurisdiction over this matter, ECRCO is referring this complaint to the EEOC’s Honolulu office for appropriate action.

Thank you in advance for your assistance. If you have any questions about this correspondence, please contact Debra McGhee, at (202) 564-4646, by e-mail at mcghee.debra@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office, (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosures

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
Regional Counsel
US EPA Region 9